

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District	Northern District of Texas (Dallas)
Name (under which you were convicted): Jose Maria Uvalle		Docket or Case No.: 3:19-cr-00371-L-2	
Place of Confinement: FCI VICTORVILLE MED., P.O. BOX 3725, ADELANTO, CA 92301		Prisoner No.: 16040-479	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Jose Maria Uvalle	

**MOTION**

1. (a) Name and location of court which entered the judgment of conviction you are challenging:  
United States District Court for the Northern District of Texas, Dallas Division, 1100 Commerce St # 1452, Dallas, TX 75242

(b) Criminal docket or case number (if you know): 3:19-cr-00371-L-2

2. (a) Date of the judgment of conviction (if you know): 2/25/2021

(b) Date of sentencing: 2/25/2021

3. Length of sentence: 156 months

4. Nature of crime (all counts):

21 U.S.C. § 841(a)(1) & (b)(1)(C) Possession with Intent to Distribute a Controlled Substance  
(2) BOP 156 months, S/R 3 years, MSA \$100

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☒

9. If you did appeal, answer the following:

- (a) Name of court: N/A
- (b) Docket or case number (if you know): N/A
- (c) Result: N/A
- (d) Date of result (if you know): \_\_\_\_\_
- (e) Citation to the case (if you know): N/A
- (f) Grounds raised:  
N/A

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): N/A
- (2) Result: N/A
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): N/A
- (5) Grounds raised:  
N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: N/A
- (2) Docket or case number (if you know): N/A
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: N/A
- (5) Grounds raised: N/A

N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket of case number (if you know): N/A

(3) Date of filing (if you know):

(4) Nature of the proceeding: N/A

(5) Grounds raised:

N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☒

(7) Result: N/A

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐No ☒

(2) Second petition:

Yes ☐No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:  
Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL DURING THE PLEA PHASE, PRETRIAL, AND SENTENCING PHASE**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner Uvalle submits that Counsels were ineffective during the plea phase, pretrial and sentencing phase because Counsels failed to investigate, procure and provide an interpreter, apprise Petitioner of the facts, omitted and misled Petitioner with vital case information, demonstrated half-heartedness performance, failed to explain the PSR and the information contained in the PSR and any Objections, failed to inform Petitioner of any plea negotiation attempts, failed to present Petitioner with the plea document, failed to adequately consult with Petitioner, and indicated that Petitioner's guilty plea would yield a lower sentence.

Had Counsels apprised, properly informed, procured an interpreter, not misled or deceived Petitioner, engaged in plea negotiations, investigated that facts, and challenged self serving statements used against Petitioner, Petitioner would not have entered a plea of guilty and in its stead proceeded to trial or sought the most favorable plea offer.

\* Please See Memorandum of Points and Authorities and Affidavit Attached herein.

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒



(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

## GROUND TWO:

### INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO PROCURE AND PROVIDE AN INTERPRETER

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner submits that Counsels were ineffective for their failure to procure and provide a effective assistance. Consels were not a Spanish/English interpreter or certified in that area. However, Counsel Beck persisted in moving forward with several visits with Petitioner to discuss the case to which Petitioner did not completely understand. The records and files to all the Counsel visits will show that Counsel in certain occassions failed to provide or procure translation of documents. Petitioner entered a plea of guilty with omitted information, misunderstood information and without the awareness and understanding of the full version of the facts rendering ineffective assistance of counsel and a null and void plea of guilty.

Had Counsels apprised, properly informed, procured an interpreter, not misled or decieved Petitioner, engaged in plea negotiations, investigated that facts, and challenged self serving statements used against Petitioner, Petitioner would not have enetered a plea of guilty and in its stead proceeded to trial or sought the most favorable plea offer.

\* Please See Memorandum of Points and Authorities and Affidavit Attached herein.

## (b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

## (c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

**GROUND THREE: COUNSELS WERE INEFFECTIVE FOR HIS DEFECTIVE ADVICE AND INTENTIONAL INACCURATE AND MISLEADING OF FACTS**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner submits that Counsels were ineffective for their defective advice intentional inaccurate and misleading of advice and facts to Petitioner. Counsels insinuated a guaranteed low sentence. Further indicated Petitioner would receive a low end sentence and not to worry, failed to explain the PSR to Petitioner and advised Petitioner to agree by saying yes to the Judge.

\* Please See Memorandum of Points and Authorities and Affidavit Attached herein.

Petitioner submits that Counsels were ineffective for their defective advice intentional inaccurate and misleading of advice and facts to Petitioner.

\* Please See Memorandum of Points and Authorities and Affidavit Attached herein.

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☒

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

**GROUND FOUR: COUNSELS INEFFECTIVE ASSISTANCE RENDERS VOIDS UVALLE'S GUILTY PLEA BECAUSE IT WAS ENTERED UNKNOWNINGLY, UNINTELLIGENTLY, AND INVOLUTARILY**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner submits that his Guilty plea was unconstitutionally entered rendering null and void because it was entered unknowingly, unintelligently and involuntarily due to Counsels misleading, inaccurate, deceptive, and omitted set of facts and advice. The PSR was not explained, the elements to the charges, the Sentencing Guidelines and Petitioner's Level on the U.S.S.G. Counsels exhibited their desire to a speedy disposition of Petitioner's case.

Had Counsels apprised, properly informed, procured an interpreter, not misled or deceived Petitioner, engaged in plea negotiations, investigated that facts, and challenged self serving statements used against Petitioner, Petitioner would not have entered a plea of guilty and in its stead proceeded to trial or sought the most favorable plea offer.

\* Please See Memorandum of Points and Authorities and Affidavit Attached herein.

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A



(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Ineffective assistance of counsel, incomplete record, many out of court room events that are not in or part of the record, acting pro se, need interpreter

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

I am acting pro se, I do not have the record, the record is underdeveloped, I do not speak or understand English properly, I need an interpreter, there are out of court rooms events that are not on the record, I need the assistance of counsel, no appeal was taken due to my counselor's ineffectiveness. I am indigent prisoner.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:  
Attorney Robert J Herrington
- (b) At the arraignment and plea:  
Attorney Robert J Herrington
- (c) At the trial:  
N/A
- (d) At sentencing:  
Attorney Rose L Romero
- (e) On appeal:  
N/A
- (f) In any post-conviction proceeding:  
N/A
- (g) On appeal from any ruling against you in a post-conviction proceeding:  
N/A
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:  
N/A
- (b) Give the date the other sentence was imposed: \_\_\_\_\_
- (c) Give the length of the other sentence: N/A
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒
18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

This Motion is timely as it is being filed within the one year for 2255 motions.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Appointment of counsel, Grant an Evidentiary Hearing, Order Government to Respond to Petitioner's Grounds, Grant Leave to Utilize Discover tools, or issue an Order what this honorable Court deems just and proper. Please See Relief Requested

or any other relief to which movant may be entitled. Please See Relief Requested in Memorandum of Points and Authorities Attached herein.

Acting Pro Se  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 1/14/22  
(month, date, year)

Executed (signed) on 1/14/22 (date)

Jane Marshall  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.



Jose Maria Uvalle  
Reg. No. 16040-479  
FCI Victorville Med I  
Federal Correctional Institution  
PO Box 3725  
Adelanto, CA 92301

JAN 25 2022



SPOKANE P&DC 992

TUE 19 JAN 2022 1 AM

United States District Court  
For the Northern District of Texas

Dallas Division  
1100 Commerce St, #1452  
Dallas, Texas 75242